

APPEAL NO. 041053
FILED JUNE 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 12, 2004. The hearing officer decided that: (1) the respondent (carrier) waived its right to dispute compensability of the claimed low back injury because it failed to timely contest the injury in accordance with Section 409.021; (2) the appellant (claimant) sustained a compensable, but not work-related, low back injury on _____; and (3) the claimant had disability beginning July 31, 2001, and continuing through December 31, 2001, and at no time thereafter through the date of the hearing. The claimant appeals the hearing officer's finding that he did not sustain an injury in the course and scope of his employment and asserts that disability continued through April 10, 2002. The carrier urges affirmance. The hearing officer's waiver determination was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in making the complained-of determinations. The determinations involved questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's determinations are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Notwithstanding our affirmance of the hearing officer's course and scope finding, the claimant's low back injury is compensable as a matter of law, due to the carrier's waiver.

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **ST. PAUL MERCURY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701.**

Edward Vilano
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge